



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



FOIA Request 2019-1015

Freedom of Information Act Office
Cohen Bldg., Suite 5541
330 Independence Ave., SW
Washington DC 20201

May 29, 2019

Emma Best

Email: 74298-01988069@requests.muckrock.com

Dear Ms. Best:

This is an *interim* response to the Freedom of Information Act (FOIA), requests you submitted to the Department of Health and Human Services (HHS), Office of Inspector General (OIG), for a list or printout or database listing of Inspector General investigations closed/reports completed during calendar year 2018. You also requested a fee waiver.

Under the FOIA and its implementing regulation, criteria exist to qualify a requester for a fee waiver specifically: (1) disclosure of the information must be in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the Government; and (2) disclosure must not be in the commercial interest of the requester. You should also note that HHS considers the following factors: (1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government? (2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge? (3) Will the disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? (4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure? (45 C.F.R. Section 5.45(b))

If the four factors of the public interest prong are satisfied, the requester must then satisfy the commercial prong by showing that the disclosure of the information is not primarily in the commercial interest. (45 C.F.R. Section 5.45(c)) The requester bears the burden of justifying entitlement to a fee waiver. See *Larson v. Central Intelligence Agency*, 843 F.2d 1481, 1843 (D.C. Cir. 1998); *Carney v. United States Department of Justice*, 10 F.3d 807, 814 (2nd Cir. 1994); *McQueen v. United States*, 264 F. Supp. 2d 502, 524 (S.D. Tex 2003) *aff'd*, 100 Fed. Appx. 964 (5th Cir. 2004)

In support of your request for a fee waiver, you stated "As my primary purpose is to inform about government activities by reporting on it and making the raw data available, I request that fees be waived." However, you did not proffer any support of how the requested records, if any exist, would significantly contribute to the public's understanding of HHS operations. Therefore, I am denying your request for a fee waiver. It should be noted that all FOIAs are subject to billable processing charges if they exceed \$25.00, which is the Department's threshold for billing purposes.

Please note: We have placed you in the "news/media" category, which means you will only be billed duplication costs at \$.10 per page, however, since we process all records electronically there will be no duplication costs.

If you are not satisfied with my decision on this request, you may administratively appeal this denial of a fee waiver. Your appeal must be postmarked or electronically transmitted within 90 days from the date of this letter, to U.S. Department of Health and Human Services, Assistant Secretary for Public Affairs, FOI/Privacy Act Division, Suite 729H, 200 Independence Avenue, SW, Washington, DC 20201. Clearly mark both the envelope and your letter "Freedom of Information Act Appeal" or you may email them at FOIArequest@hhs.gov.

In addition, you may contact our FOIA Requester Service Center at 202.619.2541 or FOIA@oig.hhs.gov, for any further assistance or to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink that reads "Robin R. Brooks".

Robin R. Brooks

Director

Freedom of Information